

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

BARBARA J. SIMMONS
Oldenburg, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

SCOTT L. BARNHART
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

WILLIE JARVIS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 49A02-0709-CR-820

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jose Salinas, Judge and
The Honorable Melissa Kramer, Commissioner
Cause No. 49G17-0705-CM-85742

May 7, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Willie Jarvis appeals his conviction of Battery,¹ a class A misdemeanor, challenging the sufficiency of the evidence as the sole issue on appeal.

We affirm.

The facts favorable to the conviction are that at the time of the incident in question, Jarvis and the victim, Irene Rudolph, had been dating for approximately three years. The two were at a New Year's Eve party at Rudolph's home. Just after midnight on January 1, 2007, Jarvis began arguing with Rudolph's sister and wheelchair-bound mother. The mother told Jarvis there was not going to be any arguing in the house. This angered Jarvis and he advanced threateningly toward Rudolph's mother. Several people grabbed Jarvis and stopped him. The incident prompted Rudolph to order Jarvis to leave her house. Jarvis responded by slapping Rudolph twice in the face, knocking her to the floor. At that point, other people in the house intervened and physically pushed Jarvis out the door. Police were summoned to the scene.

The next day, Rudolph went to the hospital because she was experiencing pain and swelling in her right foot as a result of having fallen down when Jarvis knocked her to the floor. X-rays revealed that Rudolph had three broken bones in that foot. Jarvis was charged with domestic battery as a class A misdemeanor. He was convicted as set out above following a bench trial.

¹ Ind. Code Ann. § 35-42-2-1 (West, PREMISE through 2007 1st Regular Sess.).

Jarvis contends the evidence is insufficient to prove that he knowingly struck Rudolph. Our standard of review in such challenges is well settled. Respecting the factfinder's exclusive province to weigh conflicting evidence, we neither reweigh the evidence nor judge witness credibility. *Gleaves v. State*, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007). We consider only the probative evidence and reasonable inferences supporting the verdict, and “must affirm ‘if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.’” *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005) (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

The basis of Jarvis's challenge to the sufficiency of the evidence is reflected in the following excerpt from his appellate brief:

To convict Mr. Jarvis of battery as a Class A misdemeanor, the State was required to prove that he knowingly or intentionally touched Ms. Rudolph in a rude insolent or angry manner that resulted in bodily injury. This it failed to do. Mr. Jarvis denies any intent to harm Ms. Rudolph. Mr. Jarvis testified during the bench trial that after Ms. Rudolph asked him to leave her home, he attempted to move from the congested dining room to exit from the backdoor into the backyard. He testified that someone came up from behind him and grabbed him in an aggressive manner. Mr. Jarvis claimed that as he turned to see who it was, his arm hit Ms. Rudolph in the face and she fell down. Clearly, any physical contact with Ms. Rudolph was accidental at most.

Appellant's Brief at 6 (internal citations to record omitted).

Pursuant to I.C. § 35-42-2-1(a)(1)(A), in order to convict Jarvis of battery as a class A misdemeanor, the State was required to prove that he knowingly or intentionally touched Rudolph in a rude, insolent, or angry manner, resulting in bodily injury to

Rudolph. Obviously, Jarvis's version of the facts differed from those provided in the testimonies of Rudolph and Deborah McDade, who is Rudolph's sister. Rudolph's and McDade's testimonies were consistent with each other and were the primary sources of the facts recited earlier in this opinion. If Rudolph's and McDade's respective testimonies are believed, the State's burden was met. If, on the other hand, the court believed Jarvis's claim that he did not strike Rudolph on purpose, then the State's burden presumably was not met.

As reflected above, such credibility assessments are beyond our purview upon appellate review. The task of sorting through the competing versions of the incident and deciding which was the more credible fell upon the trial court, and we cannot second-guess its determinations in that regard. *See McHenry v. State*, 820 N.E.2d 124. Rudolph's and McDade's respective testimonies constituted sufficient evidence to support Jarvis's conviction.

Judgment affirmed.

KIRSCH, J., and BAILEY, J., concur